IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.50 OF 2007

IN

SUMMARY SUIT NO.2603 OF 2006

Dilip Madhukar Patil ...Plaintiff.

vs.

Ganesh Yashwant Waghri ...Defendant

Mr.G.H.Shukla, for Plaintiff.

None for Defendant.

CORAM: D.K.DESHMUKH, J.

DATED: 6th MARCH,2007.

P.C.:

1. The plaintiff bases his claim on the cheques of Rs.1,50,000/- which were issued by the defendant but which have been dishonoured. According to the plaintiff, he had purchased land admeasuring area about 5 acres from the defendant for Rs.5,00,000/- (Rupees five lakhs only). But in the agreement that was executed, the consideration was mentioned as Rs.1,70,000/-. According to the plaintiff, when it was found that the area of the land is less than 5 acres, the defendant has given cheques of

Rs.1,50,000/- which were dishonoured. This suit has been filed for recovery of that amount. The defence of the defendant is that the agreed consideration was Rs.1,70,000/- and not Rs.5 lakhs. When the plaintiff complained that the area is less than 5 acres, the defendant agreed to pay the amount of Rs.1,50,000/- provided he gets his land back.

2. Now if one goes as per the document then the written agreement mentions the amount of consideration as Rs.1,70,000/- out of which the plaintiff was to recover the amount of Rs.1,50,000/-. Admittedly, the plaintiff is also retaining the land. It does not stand to reason that the defendant will pay back the amount of Rs.1,50,000/- out of the total agreed consideration of Rs.1,70,000/- and will also permit the plaintiff to retain the land. If one accepts the case of the plaintiff, the plaintiff will have to establish that the agreed consideration was not Rs.1,70,000/- as mentioned in the agreement but it was actually Rs.5 lakhs, and for that the plaintiff will have to lead oral evidence. Thus, the plaintiff cannot get decree in summary jurisdiction because to prove the claim of the plaintiff oral evidence is necessary. I find that the defence

offered by the defendant has substance. The summons for judgment is therefore, disposed of. Defendant is granted unconditional leave to defend the suit. Written statement to be filed within Eight weeks from today.